

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1507

IN THE MATTER OF:

Served February 27, 1976

Order Directing D. C. TRANSIT SYSTEM, )  
INC., to Comply with Regulation Nos. )  
55-08 and 65-03 )

Docket No. 294

By Order No. 1482, served December 30, 1975, the Commission directed that a public hearing be held for the purpose of showing cause that Certificate of Public Convenience and Necessity No. 5-A of D. C. Transit System, Inc. (D. C. Transit) should not be suspended or revoked. The Commission set forth three separate subject matters for consideration: (A) whether D. C. Transit assessed fares other than those set forth in its WMATC Tariff No. 46 and Supplement No. 1 thereto during the period July 1973 to October 1975; (B) whether D. C. Transit conducted any operations under its Certificate of Public Convenience and Necessity No. 5-A during the period July 1973 to October 1975; and (C) whether D. C. Transit conducted any operations subject to the Commission's jurisdiction which were not authorized during the period July 1973 to October 1975. For the purpose of clarity, these considerations will be separately presented herein.

A. TARIFF VIOLATIONS

On January 22, 1976, D. C. Transit filed a revised annual report for the year ended December 31, 1974. The revised report discloses the following revenues: group charter (non-sightseeing) \$975,980, contract charter \$17,617, individual ticket sightseeing \$79,628, and special operations (garage revenue) \$47,448. The group charter (non-sightseeing) revenue was generated by operations performed both within the Metropolitan District and beyond the Metropolitan District. The contract charter revenue was generated by operations performed pursuant to a one-year contract with the State Department. The contract terminated June 30, 1975, and the reported revenue was received during the period July 1974 through December 1974. The contract operations were performed wholly within the Metropolitan District. The garage revenue was generated by services performed for itinerant buses, including the sale of fuel, repairs, and parking fees. Although the transportation revenues 1/ resulted from operations performed within the Metropolitan

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1/ Garage revenue would not be transportation for hire revenue.



District and subject to the jurisdiction of this Commission, no tariff had been filed by D. C. Transit which specified the fare to be charged. See Compact, Title II, Article XII, Section 5(d).

With respect to the revenue generated by individually ticketed sightseeing, D. C. Transit had filed a tariff which was in effect during the calendar year 1974. That tariff and the supplement thereto specified the fares to be charged on fourteen separate tours. D. C. Transit did not include in its advertising brochure any reference to tours 10a, 12, or 14. These tours were not offered to members of the general public. In addition, D. C. Transit did include in its advertising brochure fares for tours 3, 5, 7, and 11 involving transportation charges for a boat trip between Mt. Vernon, Virginia, and Washington, D. C. These fares for tours with boat trip were not specified in the tariff and supplement thereto filed by D. C. Transit with the Commission. See Compact, Title II, Article XII, Section 5(d). During the period July 1973 through October 1975, D. C. Transit operated each of these tours and received the following revenues: \$15,468 from tour 3, \$9,820 from tour 5, \$5,640.50 from tour 7, and \$13,257.75 from tour 11. The revenues were not divided between the tours set forth in the tariff and the tours with boat trip.

A certificate of public convenience and necessity issued to a carrier may be revoked or suspended for wilful failure to comply with any regulation of the Commission. See Compact, Title II, Article XII, Section 4(g). D. C. Transit has charged and received a different compensation for transportation, and service in connection therewith, than the fares specified in its WMATC Tariff No. 46 and Supplement No. 1 thereto. However, the Commission does not believe that D. C. Transit's failure to comply with the provisions of Regulation No. 55-08 was wilful. Thus, sufficient cause has not been found to justify revocation or suspension of D. C. Transit's Certificate of Public Convenience and Necessity No. 5-A.

#### B. CERTIFICATED OPERATIONS

D. C. Transit holds certificate authority to transport passengers and their baggage, over irregular routes, in special operations limited to individually ticketed sightseeing service, from points in the District of Columbia to points in the Metropolitan District and from points in Montgomery County, Maryland, and that portion of Prince George's County, Maryland, north of the John Hanson Highway to points in the Metropolitan District. During the period July 1973 through October 1975, D. C. Transit rendered services pursuant to this authority. The services were sold through agents located within the Metropolitan District. Upon occasion, D. C. Transit leased a motor coach and driver from other sightseeing companies, which would be used to perform the certificate services. D. C. Transit would collect the per

capita fares from persons who were passengers on its tours and then apparently pay the other sightseeing companies an hourly rate for the lease of the equipment and operator. D. C. Transit would provide its own guide.

D. C. Transit also leased its motor coaches and drivers to other sightseeing companies. Upon occasion, persons who had purchased a D. C. Transit tour would be commingled with persons travelling on a tour being operated by the sightseeing company leasing D. C. Transit's equipment and operator. Such transportation services would not constitute individually ticketed sightseeing by D. C. Transit. In these instances, the carrier rendering the service is the person who is leasing the vehicle from D. C. Transit. Obviously, in these instances, the carrier's tariff would be applicable to the person using the transportation service.

D. C. Transit also sold persons tour service under its own name and had them transported by a separate carrier on the latter's equipment. Obviously, in these instances, transportation services were not being rendered by D. C. Transit but, rather, by the separate carrier whose tariff would be applicable.

A certificate of public convenience and necessity issued to a carrier may be revoked or suspended for wilful failure to comply with any term, condition, or limitation of such certificate. See Compact, Title II, Article XII, Section 4(g). D. C. Transit's Certificate of Public Convenience and Necessity No. 5-A mandates reasonable, continuous and adequate service to the public. When D. C. Transit sells transportation services which are provided by another carrier, both carriers are in violation of their tariffs as presently filed. See Compact, Title II, Article XII, Section 5(d). The filing of a joint tariff could be approved if the Commission found it to be in the public interest, but no such joint tariff has been filed for these operations. See Compact, Title II, Article XII, Section 7. Accordingly, the Commission shall direct D. C. Transit to cease and desist from commingling passengers without approval. The Commission shall schedule a public hearing to determine whether D. C. Transit has complied with this cease and desist order.

#### C. NON-CERTIFICATED OPERATIONS

D. C. Transit has been engaged in operations subject to this Commission's jurisdiction without there being in force a certificate of public convenience and necessity authorizing such transportation. See Compact, Title II, Article XII, Section 4(a). During the period July 1973 through October 1975, D. C. Transit rendered charter services within the Metropolitan District and between points within the Metropolitan District and beyond the Metropolitan District. The charter operations within the Metropolitan District included the exclusive transportation of a group of passengers with a common purpose: (A) between either Dulles International Airport or Washington National

Airport and a hotel or motel and (B) between points within the Metropolitan District for purposes other than sightseeing. These airport transfers and non-sightseeing group charters were performed in vehicles owned by D. C. Transit or leased by D. C. Transit from other carriers.

A certificate of public convenience and necessity cannot be revoked or suspended unless the carrier "wilfully fails to comply, within a reasonable time, not less than 30 days, to be fixed by the Commission, with a lawful order of the Commission commanding obedience to the rules or regulations or orders of the Commission, or to the terms, conditions, or limitations of such certificate found by the Commission to have been violated by such holder." See Compact, Title II, Article XII, Section 4(a). D. C. Transit is not authorized to perform airport transfers or non-sightseeing group charters. Such transportation services are beyond the scope of D. C. Transit's Certificate of Public Convenience and Necessity No. 5-A and constitute a violation of the terms of that Certificate. Accordingly, the Commission shall direct D. C. Transit to cease and desist from rendering any transportation services within the Metropolitan District other than the individually ticketed sightseeing service specified in its current Certificate. The Commission also shall schedule a public hearing to determine whether D. C. Transit has complied with this cease and desist order. 2/

#### D. SUPPLEMENT TO TARIFF

On January 22, 1976, D. C. Transit filed Supplement No. 2 to WMATC Tariff No. 46. That supplement seeks to delete tours 7, 10A, and 12 from its current tariff as previously supplemented, reclassify tour 14 as a new tour 7, and increase the Wax Museum admission fee for tours 6 and 8 from 75 cents to \$1.30 for adults and from 50 cents to 80 cents for children.

D. C. Transit has suspended operation of tours 7, 10A and 12 because the brochure and tariff did not conform. The request to delete these tours will be approved. The reclassification of tour 14 as tour 7 also will be approved. With respect to the increase in the admission fee for the Wax Museum, the Commission shall approve this increase in a charge incidental to the provision of the transportation service. Furthermore, it is noted that D. C. Transit will no longer collect directly for any boat transportation between Mt. Vernon and Washington. If a person desires boat transportation as part of tours 3, 5 or 11, then the passenger will purchase the boat ticket from that operator.

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2/ D. C. Transit has filed an application for temporary authority to perform airport transfers, train transfers, group charter lectured service, group charter non-lectured service, and group and individual race track service. By separate order served this date, the Commission has denied that application.

THEREFORE, IT IS ORDERED:

1. That D. C. Transit System, Inc., be, and it is hereby, directed to cease and desist from commingling its passengers with the passengers of other carriers without approval.

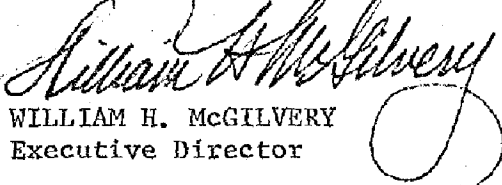
2. That D. C. Transit System, Inc., be, and it is hereby, directed to cease and desist from rendering any transportation services within the Metropolitan District other than the individually ticketed sightseeing service specified in its current Certificate of Public Convenience and Necessity No. 5-A.

3. That a public hearing be, and it is hereby, scheduled for Monday, April 19, 1976, at 9:30 A. M., in the Hearing Room of the Commission, Room 314, 1625 I Street, N. W., Washington, D. C. 20006, for the purpose of determining whether D. C. Transit System, Inc., has complied with the directives of this order.

4. That Supplement No. 2 to WMATC Tariff No. 46 of D. C. Transit System, Inc., be, and it is hereby, approved.

5. That D. C. Transit System, Inc., file with the Commission two copies of its Supplement No. 2 to WMATC Tariff No. 46 to be effective not later than five (5) days from the date of service of this order.

BY DIRECTION OF THE COMMISSION:

  
WILLIAM H. MCGILVERY  
Executive Director